



Jeb Bush
Governor

Department of Environmental Protection

Southeast District
400 N. Congress Avenue, Suite 200
West Palm Beach, Florida 33401

Colleen M. Castille
Secretary

ENVIRONMENTAL RESOURCE PERMIT

APPLICANT:

U.S. Army Corps of Engineers
c/o Mr. Richard Bonner, P.E.
Deputy District Engineer – Project Management
Jacksonville District
701 San Marco Boulevard
Jacksonville, Florida 32207-8175

PROJECT NAME: Kissimmee River Restoration,
Istokpoga Canal Improvements
File No: EI-0238833-003
County: Highlands and Okeechobee County

This permit is issued under the authority of Part IV of Chapter 373, Florida Statutes (F.S.), and Title 62, Florida Administrative Code (F.A.C.). The activity is not exempt from the requirement to obtain an Environmental Resource Permit. Pursuant to Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C., the Department is responsible for reviewing and taking final agency action on this activity.

ACTIVITY DESCRIPTION:

The purpose of the project is to improve the features of the Istokpoga Canal. The project will include the replacement of the existing G-85 structure with the new water control structure S-67, dredging of the canal and spoil mound removal from U.S. 98 to the oxbows, construction of a tie-back levee at the new structure, construction of a public boat ramp and parking facility, and construction of an access road from County Road 621 to the end of the tie-back levee. The project is part of the U.S Army Corps of Engineers Kissimmee River Restoration Project and is designed to comply with both the hydraulic and navigational requirements that have been identified for this project.

ACTIVITY LOCATION:

The project is located along the Istokpoga canal and at the Istokpoga Canal crossing at U.S. Hwy 98 in Highlands County, Florida.

This permit also constitutes a finding of consistency with Florida's Coastal Zone Management Program, as required by Section 307 of the Coastal Management Act.

This permit also constitutes certification of compliance with water quality standards under Section 401 of the Clean Water Act, 33 U.S.C. 1341.

This activity also requires a proprietary authorization, as the activity is located on sovereign submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund, pursuant to Article X, Section 11 of the Florida Constitution, and Sections 253.002 and 253.77, F.S. The activity is not exempt from the need to obtain a proprietary authorization. The Department has the responsibility to review and take final action on this request for proprietary authorization in accordance with Section 18-21.0051, and the Operating Agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C. In addition to the above, this proprietary authorization has been reviewed in accordance with Chapter 253 and Chapter 18-21, Section 62-343.075, F.A.C.

As staff to the Board of Trustees, the Department has reviewed the activity described above, and has determined that the activity requires a SSL for the use of those lands, pursuant to Chapter 253.77, F.S., Sovereign Submerged Land Lease No. 4099 issued to the South Florida Water Management District for restoration of the Kissimmee River Project in cooperation with the U.S. Army Corps of Engineers.

You are hereby advised that authorizations also may be required by other federal, state, and local entities. This authorization does not relieve you from the requirements to obtain all other required permits and authorizations.

The above named permittee is hereby authorized to construct the work shown on the application and approved drawing(s), plans, and other documents attached hereto or on file with the Department and made a part hereof. This permit is subject to the limits, conditions, and locations of work shown in the attached drawings, and is also subject to the attached 12 General Conditions and 12 Specific Conditions, which are a binding part of this permit. You are advised to read and understand these drawings and conditions prior to commencing the authorized activities, and to ensure the work is conducted in conformance with all the terms, conditions, and drawings. If you are utilizing a contractor, the contractor also should read and understand these drawings and conditions prior to commencing the authorized activities. Failure to comply with all drawings and conditions shall constitute grounds for revocation of the permit and appropriate enforcement action.

The Corps agrees to construct the project in accordance with the provisions of the permit application and supporting documentation. To the extent sovereign immunity has been waived under 33 U.S.C. §§ 1323 and 1344(t), the Corps' agreement to construct the project in accordance with the provisions of the permit application and supporting documentation is an enforceable condition of this permit.

GENERAL CONDITIONS:

1. This permit, including its general and specific conditions, must be construed in light of the February 2006 recognized in the Interagency Cooperative Agreement for Civil Works Projects, (ICA), the Department has the authority to include reasonable conditions in this permit. All of the conditions in this permit, both general and specific, are enforceable to the extent sovereign immunity has been waived under 33 V.S.C. §§ 1323 and 1344(t). The ICA is incorporated herein by reference.
2. All activities approved shall be implemented as set forth in the drawings incorporated by reference and in compliance with the conditions and requirements of this document. The Corps shall notify the Department in writing of any anticipated changes in:
 - a) operational plans;
 - b) project dimensions, size or location;
 - c) ability to adhere to permit conditions;
 - d) project description included in the permit;
 - e) monitoring plans.

If the Department determines that a modification to the permit is required, then the Corps shall apply for and obtain the modification. Department approval of the modification shall be obtained prior to implementing the change, unless the change is determined by the Department to reduce the scope of work from that authorized under the original permit, and will not effect compliance with permit conditions or monitoring requirements.

3. If, for any reason, the Corps does not comply with any condition or limitation specified herein, the Corps shall immediately provide the Department with a written report containing the following information:

- a) a description of and cause of noncompliance;
- b) the period of noncompliance, including dates and times;
- c) impacts resulting or likely to result from the non-compliance;
- d) steps being taken to correct the non-compliance; and
- e) the steps being taken to reduce, eliminate, and prevent recurrence of the noncompliance.

Compliance with the provisions of this condition shall not preclude the Department from taking any enforcement action allowed under state law with respect to any non-compliance.

- 4. The Corps shall obtain any applicable licenses, permits, or other authorizations, which may be required by federal, state, local or special district laws and regulations. Nothing herein constitutes a waiver or approval of other Department permits or authorizations that may be required for other aspects of the total project.
- 5. Nothing herein conveys to the Corps or creates in the Corps any property right, any interest in real property, any title to land or water, constitutes State recognition or acknowledgment of title, or constitutes authority for the use of Florida's sovereign submerged lands seaward of the mean high-water line or an established erosion control line, unless herein provided, and the necessary title, lease, easement, or other form of consent authorizing the proposed use has been obtained from the State.
- 6. Any delineation of the extent of a wetland or other surface water submitted as part of the application, including plans or other supporting documentation, shall not be considered specifically approved unless a specific condition of this authorization or a formal determination under section 373.421(2), F.S., provides otherwise.
- 7. Nothing herein authorizes any entrance upon or activities on property, which is not owned or controlled by the Corps or local, sponsor, or convey any vested rights or any exclusive privileges.
- 8. This document or a copy thereof, complete with all conditions, attachments, modifications, and time extensions shall be kept at the work site of the authorized activity. The Corps shall require the contractor to review this document prior to commencement of the authorized activity.
- 9. The Corps specifically agrees to allow Department personnel with proper identification, at reasonable times and in compliance with Corps specified safety standards access to the premises where the authorized activity is located or conducted for the purpose of ascertaining compliance with the terms of this document and with the rules of the Department and to have access to and copy any records that must be kept; to inspect the facility, equipment, practices, or operations regulated or required; and to sample or monitor any substances or parameters at any location reasonably necessary to assure compliance. Reasonable time may depend on the nature of the concern being investigated.
- 10. At least forty-eight (48) hours prior to the commencement of authorized activity, the Corps shall submit to the Department a written notice of commencement of activities indicating the anticipated start date and the anticipated completion date.
- 11. If historic or archaeological artifacts such as, but not limited to, Indian canoes, arrow heads, pottery or physical remains, are discovered at any time on the project site, the Corps shall immediately stop all activities in the immediate area which disturb the soil and notify the Department and the State Historic Preservation Officer. In the event that unmarked human remains are encountered during permitted activities, all work shall stop in the immediate area and the proper authorities notified in accordance with Section 872.05, Florida Statutes.
- 12. Within a reasonable time after completion of construction activities authorized by this permit, the Corps shall submit to the Department a written statement of completion. This statement shall notify the Department that the work has been completed as authorized and shall include a description of the actual work completed. The

Department shall be provided, if requested, a copy of any as-built drawings required of the contractor or survey performed by the Corps.

SPECIFIC CONDITIONS:

1. **Authorized Construction:** This permit authorizes construction of the Kissimmee River Restoration Project Contract 6A2, in accordance with the Final (100%) design Submittal Plans submitted to the Department on December 8, 2005. A copy of this permit will be kept on site at all times until construction is complete.
2. **Instructions to Contractors.** The permittee shall ensure that the permit conditions are explained to all construction personnel working on the project, and shall give a copy of this permit to each contractor and subcontractor before the authorized work begins. Prior to construction, the permittee shall schedule a pre-construction meeting and invite the contractor(s), and representatives from the U.S. Army Corps of Engineers, the Department, and other environmental regulatory agencies. The Department shall receive at least two weeks' notice of the meeting. The proposed construction schedule shall be provided at the pre-construction meeting and submitted to the address below.
3. **Address.** Reports and notices submitted to the Department in accordance with this permit shall be submitted to the Department's Southeast District Office, Water Resource Management and Environmental Planning, Attn.: Robyn Begley, 400 North Congress Avenue, Suite 200, West Palm Beach, Florida, 33401, telephone number (561) 681-6709. Electronic submittals can be by e-mail addressed to robyn.begley@dep.state.fl.us.
4. **Construction Best Management Practices.** At all times during the construction, the permittee shall use best management techniques for erosion and sedimentation control. All graded areas shall be stabilized and vegetated immediately after construction to prevent erosion. The permittee shall take all reasonable precautions to minimize the suspension and transport of soils, levee materials, and roadway materials into waters adjacent to or downstream of the construction site. Turbidity barriers/curtains or other appropriate measures shall be installed and anchored to the bottom of the Istokpoga canal just west (upstream) and just east (downstream) of the working phase of the construction for the tie-back levee, and also upstream and downstream of the excavation/dredging area east of the CSX Railroad. These turbidity barriers/curtains or other appropriate measures shall be installed and anchored in the canal to prevent turbidity from escaping from the areas being dredged or other work-areas.
5. **Environmental Protection Plan.** Protection of environmental resources shall be in accordance with the United States Fish & Wildlife Service, (USFWS) Coordination Act Report (Tab E in the permit application), and the USFWS Biological Opinion, (anticipated updated version to be completed in May 2006). A copy of the contractor's Environmental Protection Plan shall be provided to the Department's representative at the preconstruction conference and to the Department offices at the addresses listed in Specific Condition No. 3. Prior to the initiation of construction, a new nest survey should be performed in the project area in the peak of the caracara breeding season to document the presence or absence of nest structures. Appropriate precautions must be followed to ensure construction activities do not impact this species. Therefore, a monitoring program should be established to identify and document the presence of caracaras and any nests within the project site during construction activities. Nesting distribution, number of nests and nesting success should be detailed in a final report prior to the commencement of construction.
6. **Operation, Maintenance, Repair, Replacement and Rehabilitation (OMRR&R) Manual.** No less than 30 days prior to completion of the project, the permittee shall submit a draft OMRR&R Manual as provided in the Project Cooperation Agreement between the permittee and Non-Federal Sponsor (District) to the Department at the addresses listed in Specific Condition No. 3.
7. **Wetland Protection and Restoration.** This project is expected to result in approximately 70.30 acres of wetland and/or surface water impact as a result of construction. Project construction in and near wetlands or

surface waters shall at all times be implemented to minimize impacts on these natural resources. Prior to the commencement of construction, the perimeter of the protected wetlands in the Northwest corner of U.S. Highway 98 and the Istokpoga canal shall be staked and fenced off with construction fencing or other effective physical barriers to prevent encroachment into the wetlands. In addition, the area around the tie-back levee should also be staked and fenced off with construction fencing or other physical barriers to prevent encroachment into the historic cypress slough. The Contractor shall coordinate with the contracting officer to notify the staff of the FDEP Southeast District Office in writing upon completion of staking/fencing to set up a joint inspection of this work. It is a requirement of this permit that the permittee schedule a final site visit with the Department to allow for inspection of the project site once the temporary works have been removed.

8. **Turbidity Monitoring.** Effective means of turbidity control, such as, but not limited to, turbidity curtains, shall be employed during all operations that may create turbidity so that it shall not exceed 29 NTU's above background. Turbidity screens may be placed and maintained around the work area. All screens, sheetpile, and other turbidity control devices may remain in place until all turbidity has subsided and meets state standards.

Turbidity monitoring equipment and personnel trained to use it shall be available on site at all times during construction that could generate turbidity. For monitoring purposes, the work area is that area defined by the turbidity curtains. The permittee shall monitor turbidity levels at least once every four hours during all operations that may create turbidity (unless monitoring data shows this to be excessive) during construction as follows.

A. Monitoring samples shall be taken at the following locations:

1. Background Sample(s): One background sample station, at least 150 meters upcurrent of the work area(s), collected outside of containment barriers, and outside any visible plume generated by the construction.
2. Compliance Sample(s): In the Istokpoga Canal, at a point no greater than 150 meters downcurrent from each of the work areas, within the densest portion of any visible plume generated by construction. If there are multiple work areas where the contractor is creating a visible turbidity plume at more than one location, each work area needs to be monitored separately.

B. Turbidity monitoring results shall be compiled daily and summarized quarterly (every three-calendar months) by project. Beginning with the first calendar month that construction occurs that could generate turbidity in waters adjacent to the construction sites; a report containing the summarized turbidity monitoring results for each project shall be submitted quarterly to the Department at the address listed in Specific Condition No. 3. If no construction occurs that could generate turbidity during the quarterly monitoring period, the report shall be so noted. The reports shall also contain the following information:

1. Permit number;
2. Dates and time of sampling and analysis;
3. A statement describing the methods used in collection, handling, storage and analysis of the samples;
4. A clear description of project activities taking place at the time of sampling;
5. A map indicating the sampling locations; and
6. A statement by the individual responsible for implementation of the sampling program concerning the authenticity, precision, limits of detection and accuracy of the data.

- C. Monitoring reports shall also be consistent with the General Requirements of Section 01411, 3.2.2.3, Turbidity and Disposal Monitoring, and include the following information for each sample that is taken:
1. Water depth;
 2. Depth of sample;
 3. Weather conditions; and
 4. Water level stage and direction of flow.

In the event that project-generated turbidity levels beyond the work areas exceed the standard (29 NTU's above background), project activities contributing to elevated turbidity levels shall immediately cease, and the Department shall be notified immediately. Work shall not resume until the work can be conducted in compliance with the aforementioned turbidity standard.

9. **Surface Waters.** All construction work in surface waters shall be conducted in a manner to comply with State Water Quality Standards.
10. **NPDES Stormwater Construction Generic Permit.** The issuance of this Permit does not constitute coverage under the National Pollutant Discharge Elimination System (NPDES) Generic Permit for Stormwater Discharges from Construction Activities (CGP) pursuant to Rule 62-621.300(4), F.A.C. Permittee is advised to contact the Department's NPDES Stormwater Program at (850) 245-7522 or toll free at (866) 336-6312 or to download application information at <http://www.dep.state.fl.us/water/stormwater/npdes/construction1.htm> prior to the commencement of any construction.
11. **NPDES General Permit for the Discharge of Produced Ground Water from any Non-Contaminated Site Activity.** The issuance of this Permit does not constitute coverage under the NPDES General Permit for the Discharge of Produced Ground Water from any Non-Contaminated Site Activity pursuant to 62-621.300(2), F.A.C. If any offsite discharges will occur due to construction dewatering activities, then coverage under the aforementioned General Permit may be required and the permittee is advised to review Rule 62-621.300(2), F.A.C. Before discharge of produced ground water can occur, analytical tests on samples of the proposed discharge water shall be performed to determine if contamination exists. If the analytical results comply with applicable criteria for use of the General Permit, then a short summary of the proposed activity and copy of the analytical tests shall be sent to the address in Specific Condition No. 3 within one week after discharge begins, and the permittee may proceed with the project while abiding by all conditions of the General Permit.
12. **Cultural Resource Survey.** A professional cultural resource survey of the project area shall be conducted per specifications set forth in Chapter, 1A-46, F.A.C., in accordance with the Florida Department of State, Division of Historical Resources.

Executed in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Kim Shugar
Office of Ecosystem Projects

May 16, 2006
Date

Electronic Copies furnished to:

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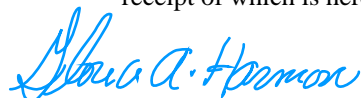
FDEP'S – Kevin Neal, Kim Shugar, John Outland, Temperince Morgan, Inger Hansen, Tim Rach, Robyn Begley, Shelly Yaun, Ernie Marks, Anne, McCarthy, Calvin Alvarez

CERTIFICATE OF SERVICE

The undersigned duly designated deputy clerk hereby certifies that this permit, including all copies, were mailed before the close of business on **May 19, 2006** to the above listed persons.

FILING AND ACKNOWLEDGMENT

FILED, on this date, under 120.52(7) of the-
Florida Statutes, with the designated Department Clerk,
receipt of which is hereby acknowledged.

 5/19/06

Clerk Date